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2 **UNITED STATES DISTRICT COURT**

3 **DISTRICT OF NEVADA**

4 VERNON MARTIN,

Case No. 3:23-cv-00105-RCJ-CLB

5 Petitioner,

ORDER

6 v.

7 TIM GARRETT, et al.,

8 Respondents.

9 Petitioner Vernon Martin submitted a *pro se* protective 28 U.S.C. § 2254 habeas petition,
 10 submitted a motion for counsel, and paid his filing fee. (ECF Nos. 1-1, 1-2, 3.) This matter comes
 11 before the Court on initial review under the Rules Governing Section 2254 Cases (“Habeas Rules”)
 12 and for consideration of Martin’s motion for appointment of counsel. For the reasons discussed
 13 below, this Court directs service of the petition and grants Martin’s motion.

14 **I. BACKGROUND¹**

15 Martin challenges a conviction and sentence imposed by the Second Judicial District Court
 16 for Washoe County (“state court”). *State of Nevada v. Vernon Ernest Martin*, Case No. CR19-
 17 2924. On January 19, 2021, the state court entered a judgment of conviction, pursuant to a guilty
 18 plea, for attempted lewdness with a minor. Martin was sentenced to 96 to 240 months (8-20 years)
 19 in prison. Martin appealed, and the Nevada Court of Appeals affirmed on November 17, 2021.

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23 ¹ The Court takes judicial notice of the online docket records of the Second Judicial District Court and Nevada appellate courts. These docket records may be accessed by the public online at: <https://www.washoecourts.com/Query/DetailedCaseSearch> and <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 Martin moved for review by the Nevada Supreme Court, but the Nevada Supreme Court denied
2 review. Remittitur issued on January 27, 2022.

3 On December 5, 2022, Martin transmitted a *pro se* state petition for writ of habeas corpus.
4 The state court appears to have filed the petition in Martin’s criminal case.² Following the filing
5 of Martin’s petition, Martin’s criminal counsel withdrew, noting that his representation of Martin
6 concluded when the Nevada Supreme Court denied his petition for review on direct appeal almost
7 a year prior. However, because Martin still technically had counsel listed in his criminal case (and
8 because the state court did not file Martin’s state petition for writ of habeas corpus in a separate
9 civil case), the state court struck Martin’s state petition for writ of habeas corpus as a fugitive
10 document because it was “filed in proper person while he was represented by” counsel. (ECF No.
11 1-1 at 170.) Martin indicates that he intends to file an appeal to the Nevada Supreme Court.

12 Martin, with the help of a fellow inmate, transmitted his federal habeas petition on or about
13 March 16, 2023. (ECF No. 1-1 at 1.) Martin brings eight ineffective assistance of trial counsel
14 claims, one ineffective assistance of appellate counsel claim, and a cumulative error claim. (*Id.* at
15 18–19.)

16 II. DISCUSSION

17 Habeas Rule 4 requires the assigned judge to examine the habeas petition and order a
18 response unless it “plainly appears” that the petition is not entitled to relief. *See Valdez v.*
19 *Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). This rule allows courts to screen and dismiss
20 petitions that are patently frivolous, vague, conclusory, palpably incredible, false, or plagued by
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23 ² Nev. Rev. Stat. § 34.730(3) provides that “the clerk of the district court shall file a petition as a new action separate and distinct from any original proceeding in which a conviction has been had.”

1 procedural defects. *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*,
2 908 F.2d 490, 491 (9th Cir. 1990) (collecting cases). A response is warranted in the instant case.

3 This Court now turns to Martin’s motion for the appointment of counsel. (ECF No. 1-2.)
4 There is no constitutional right to appointed counsel for a federal habeas corpus proceeding.
5 *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir.
6 2015) (citing *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007)). An indigent petitioner may
7 request appointed counsel to pursue that relief. 18 U.S.C. § 3006A(a)(2)(B). The decision to
8 appoint counsel is generally discretionary. *Id.* (authorizing appointed counsel when “the interests
9 of justice so require”). However, counsel must be appointed if the complexities of the case are
10 such that denial of counsel would amount to a denial of due process, and where the petitioner is a
11 person of such limited education as to be incapable of fairly presenting his claims. *LaMere v.*
12 *Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Brown v. United States*, 623 F.2d 54, 61 (9th Cir. 1980).

13 Following review of the petition and the motion for appointment of counsel, the Court will
14 provisionally appoint the Federal Public Defender to represent Martin. The Court finds that
15 appointment of counsel is in the interests of justice given, among other things, the procedural
16 history of Martin’s state habeas petition, his rather lengthy aggregate sentence, and his health
17 issues. Regarding the last point, Martin represents that he is 76 years old and suffers various mental
18 and physical health issues. (*See* ECF No. 1-2 at 4.)

19 **III. CONCLUSION**

20 **IT IS THEREFORE ORDERED** that the clerk file the 28 U.S.C. § 2254 habeas petition
21 (ECF No. 1-1) and the motion for appointment of counsel (ECF No. 1-2).

22 **IT IS FURTHER ORDERED** that the clerk (1) add Aaron Ford, Attorney General of the
23 State of Nevada, as counsel for Respondents, (2) electronically serve Respondents’ counsel a copy

1 of the petition (ECF No. 1-1), and (3) electronically provide Respondents' counsel a copy of this
2 order and copies of all items previously filed in this case by regenerating the Notices of Electronic
3 Filing. Respondents' counsel must enter a notice of appearance within 21 days of entry of this
4 order, but no further response will be required until further order.

5 **IT IS FURTHER ORDERED** that the motion for appointment of counsel (ECF No. 1-2)
6 is granted.

7 **IT IS FURTHER ORDERED** that the clerk shall electronically serve the Federal Public
8 Defender a copy of this order and the petition (ECF No. 1-1). The Federal Public Defender is
9 provisionally appointed as counsel and will have 30 days to (1) undertake direct representation of
10 Martin by filing a notice of appearance or (2) indicate the office's inability to represent Martin in
11 these proceedings. If the Federal Public Defender is unable to represent Martin, the Court will
12 appoint alternate counsel. Appointed counsel will represent Martin in all federal proceedings
13 related to this matter, including any appeals or certiorari proceedings, unless allowed to withdraw.
14 A deadline for the filing of an amended petition and/or seeking other relief will be set after counsel
15 has entered an appearance. The Court anticipates a deadline of approximately 90 days from entry
16 of the formal order of appointment.

17 **IT IS FURTHER ORDERED** that any deadline established and/or any extension thereof
18 will not signify any implied finding of a basis for tolling during the time period established. Martin
19 remains responsible for calculating the running of the federal limitation period and timely
20 presenting claims. That is, by setting a deadline to amend the petition and/or by granting any
21 extension thereof, the court makes no finding or representation that the petition, any amendments
22 thereto, and/or any claims contained therein are not subject to dismissal as untimely. *See Sossa v.*
23 *Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

Dated: May 24, 2023

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